In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1064

REGINE IRENE CALEF, PETITIONER

v.

GEORGE K. ROSENBERG, DISTRICT DIRECTOR, AND MICHAEL F. LEONE, SPECIAL INQUIRY OFFICER OF, AND UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE AT LOS ANGELES, CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The orders of the court of appeals dismissing the petition for judicial review and the appeal from denial of the habeas corpus petition are not reported.

JURISDICTION

The judgments of the court of appeals dismissing the petition for judicial review (R. II, 4, 5) and the appeal from denial of the habeas corpus petition (R. I, 6, 7) were entered on January 4, 1965. The petition

771-471—65

for a writ of certiorari was filed on April 2, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, after deportation proceedings had been reopened at petitioner's request to reconsider the designation of Italy as the country of deportation, the court of appeals properly dismissed as moot a petition for judicial review and an appeal from denial of a petition for habeas corpus, both of which sought a stay of deportation and consideration of the propriety of the designation of Italy.

STATEMENT

Petitioner, who was born in Egypt on February 17, 1917, is a citizen of Italy through marriage. She last entered the United States at the port of New York on or about October 24, 1958, as a nonimmigrant visitor for pleasure authorized to remain in the United States until September 30, 1959. Her deportability is not contested.

On May 8, 1962, after a hearing in the deportation proceedings, the Special Inquiry Officer granted petitioner the privilege of voluntary departure with the further order that if she failed to depart when and as required, the privilege would be withdrawn, and she would be deported to Italy, the country to which she consented to be sent. Petitioner failed to depart, and on July 6, 1964, the District Director issued a warrant for her deportation.

On July 9, 1964, petitioner filed in the United States District Court for the Southern District of California

a petition for a writ of habeas corpus, alleging *inter alia* that the District Director had deprived her of liberty without due process of law in ordering her deported to Italy; that he had no document showing her Italian nationality; that petitioner was denied equal protection of the laws by being considered an Italian citizen for deportation purposes, but under the United Arab Republic quota because of her birth there; that the quota system was unconstitutional; and that the Special Inquiry Officer had refused to permit her to show that deportation would result in her physical persecution within the meaning of Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). On October 7, the district court denied the petition for habeas corpus, and on October 16, it denied a motion for rehearing. On October 21, petitioner noted an appeal from the denial of the habeas corpus petition (No. 19,610 in the court of appeals). On October 26, the court of appeals denied petitioner's motion for stay of deportation pending the appeal (R. I, 1, 3); and on November 2, the district court denied a similar motion.

On November 4, 1964, petitioner filed petitions for stay of deportation and to reopen the deportation proceedings (supplemented by a petition filed on November 16, 1964 (R. II, 1, Exhibits B, C, D). She alleged changed circumstances by reason of a final divorce decree obtained by her husband in the State of Alabama on August 19, 1964. She stated that she wished to withdraw her designation of Italy as the country to which she desired to be deported, on the

ground that she had never resided there and that her Italian citizenship was open to question in view of the divorce. On November 19, the Special Inquiry Officer returned the petitions and supplement to petitioner's counsel on the ground that he (the Special Inquiry Officer) had no jurisdiction in view of the pending appeal from denial of the habeas corpus petition (R. II, 1, Ex. E). On November 20, petitioner's counsel took an appeal from this ruling to the Board of Immigration Appeals (R. II, 1, Ex. F).

On November 23, 1964, petitioner filed in the court of appeals a petition for judicial review under Section 106(a) of the Act (8 U.S.C., Supp. V, 1105a). This petition alleged in part that the Special Inquiry Officer had failed to exercise his discretion to reopen petitioner's deportation proceedings so that she could present evidence of changed circumstances by reason of her divorce and as to physical persecution under Section 243(h) of the Act. The petition also alleged that the District Director had erred in refusing to exercise his discretion to stay petitioner's deportation (R. II, 1).

On December 4, 1964, the Board of Immigration Appeals, ruling upon petitioner's appeal from the Special Inquiry Officer's refusal to entertain jurisdiction because of the pendency of judicial proceedings, ordered the cause remanded to him for reopening and a decision on the merits, subject to consent by the court of appeals to further administrative proceedings (Ex. A to petition for certiorari). On January 4, 1965, the court of appeals in No. 19,713 granted peti-

tioner's motion asking the court's consent to reopening of the deportation proceedings and granted respondents' motion for dismissal of the petition for review (R. II, 4, 5). On that same date (January 4, 1965) the court of appeals in No. 19,610 granted respondents' motion for dismissal of petitioner's appeal from the order denying the petition for a writ of habeas corpus (R. I, 6, 7). The petition for a writ of certiorari seeks review of the court of appeals' orders of January 4, 1965.

ARGUMENT

It is difficult to understand what relief petitioner seeks. Deportability has never been and is not now questioned. What petitioner sought by her action in the district court and in the court of appeals was a reconsideration of the designation of Italy as the country of deportation and a stay of execution of the order of deportation. She has obtained that relief, since the proceedings have been reopened to consider the propriety of the designation of Italy. The reopened proceedings commenced on February 12, 1965, concluded on April 21, 1965, and are now awaiting decision by the Special Inquiry Officer. Petitioner obviously cannot be deported until those proceedings are completed. The court of appeals therefore properly ruled that the issues which had been presented to it both on the appeal from the habeas corpus petition and the petition for review had become moot.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROBERT G. MAYBACK,
Attorneys.

MAY 1965.

U.S. GOVERNMENT PRINTING OFFICE : 1965